

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| SALIH HALL,        | §                              |
|                    | § No. 503, 2010                |
| Defendant Below-   | §                              |
| Appellant,         | §                              |
|                    | § Court Below—Superior Court   |
| v.                 | § of the State of Delaware     |
|                    | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 0506014139        |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: September 16, 2010

Decided: October 21, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 21<sup>st</sup> day of October 2010, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Salih Hall, filed an appeal from the Superior Court's July 22, 2010 order denying his motion for correction of an illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the Superior

Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>1</sup> We agree and affirm.

(2) The record reflects that, in August 2006, Hall pleaded guilty to two counts of Burglary in the Third Degree in connection with the burglary of Joseph A. Bank, a men's clothing store in Greenville, Delaware. As part of the plea agreement, the State dismissed one count of third degree burglary, two counts of felony theft, three counts of criminal mischief, one count of third degree attempted burglary and one count of attempted felony theft. In December 2006, the Superior Court sentenced Hall as a habitual offender<sup>2</sup> to 10 years of Level V incarceration on his first burglary conviction and to an additional 2 years of Level V incarceration on his second burglary conviction. This Court affirmed Hall's convictions on direct appeal.<sup>3</sup> This is Hall's sixth motion for correction of sentence under Rule 35.

(3) In this appeal, Hall claims that his sentence as a habitual offender is defective because none of his prior felony convictions is adequately supported by the required factual findings.

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<sup>1</sup> Supr. Ct. R. 25(a).

<sup>2</sup> Del. Code Ann. tit. 11, §4214(a).

<sup>3</sup> *Hall v. State*, Del. Supr., No. 649, 2006, Berger, J. (Oct. 30, 2007).

(4) A defendant may seek to correct an illegal sentence under Rule 35(a) only under a limited set of circumstances: a) if the sentence exceeds the statutorily-authorized limits; b) if the sentence violates double jeopardy; or c) if the sentence is internally contradictory or ambiguous with respect to a material provision.<sup>4</sup> The purpose of a motion under Rule 35(a) is not to attack the legality of a defendant's convictions or to raise allegations of error in the proceedings leading to the judgment of conviction.<sup>5</sup>

(5) Hall's 10-year burglary sentence is within the life sentence to which he could have been sentenced as a habitual offender under §4214(a). This Court has already held that Hall's sentence does not implicate double jeopardy.<sup>6</sup> Hall does not claim that his sentences are internally contradictory or ambiguous, nor is there any such evidence in the record before us. Hall's claim that there is inadequate evidence of his prior convictions does not fall within the narrow limits for a Rule 35(a) motion. This Court has previously held that Hall's plea was knowing and voluntary and that Hall voluntarily admitted his eligibility for sentencing as a habitual offender under §4214(a).<sup>7</sup> In short, there is no evidence in support of Hall's claim.

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<sup>4</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

<sup>5</sup> *Id.*

<sup>6</sup> *Hall v. State*, Del. Supr., No. 649, 2006, Berger, J. (Oct. 30, 2007).

<sup>7</sup> *Id.*

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely  
Justice